

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3
4 **LEONOR C. MARQUEZ,**

5 **Plaintiff,**

6 **v.**

7 **DRUGS UNLIMITED, INC., et al.,**

8 **Defendants.**
9

Civil No. 08-2387 (GAG/BJM)

10 **ORDER**

11 The jury trial in this case shall be rescheduled at the court's earliest open date, and the case
12 is hereby referred to Magistrate Judge Bruce J. Mc Giverin for all further proceedings, including
13 the prompt setting of a pretrial conference and trial date, holding of jury trial, and subsequent entry
14 of judgment, pursuant to 28 USC § 636.

15 Originally, plaintiff voluntarily consented to proceed before a magistrate judge, while
16 defendants did not consent (see Joint Initial Scheduling Memorandum - Docket No. 24 at 24, item
17 V). Following the court's order setting a firm trial date of October 12, 2010, unless all parties
18 consented to proceed before a magistrate judge (Docket No. 131), defendants also consented (see
19 Docket No. 134 at 2, ¶ 2). Plaintiff, however, now states that she does not consent (see Informative
20 Motion at Docket No. 132).

21 The court will not permit plaintiff to withdraw her consent. Factors which a court must
22 consider in determining whether to allow a party to withdraw consent, relevant here, are whether the
23 motion to withdraw consent is made in good faith or is dilatory and contrived, and whether the
24 interests of justice would best be served by holding a party to his consent. See Certain Underwriters
25 at Lloyds London v. Corporate Pines Realty Corp., 355 Fed. App'x 778, 779-80 (5th Cir. 2009)
26 (citing Carter v Sea Land Servs., Inc., 816 F.2d 1018, 1021 (5th Cir 1987))(holding that magistrate
27 judge acted within her discretion in denying withdrawal of the referral where defendant presented
28

1 **Civil No. 08-2387 (GAG/BJM)**

2

3 no reason for withdrawal of consent other than it no longer consented)). "Once valid consent to
4 proceed before a magistrate judge is given pursuant to 28 USC § 636(c), a party has no absolute right
5 to withdraw that consent and demand his right to an Article III judge." Carter, 818 F.2d at 1021.
6 "There is no absolute right to withdraw a validly given consent to trial before a magistrate judge and
7 such motions may be granted only on a showing of good cause or extraordinary circumstances. [A]
8 plaintiff does not have a basis for having consent withdrawn just because he changed his mind"
9 Brumley v. Livingston, 2010 WL 3169353, *8 (E.D. Tex. Aug. 9, 2010).

10 In the case at bar, the interests of justice are best served by holding plaintiff to her original
11 consent. The undersigned Article III judge presently has scheduled for October 12 trial in Civil Case
12 08-1703(GAG) , as well as the instant case. Just six calendar days later, on October 18, 2010, the
13 court has set for trial Criminal 09-312 (GAG) and Civil No. 08-2398(GAG). And, scheduled for
14 November 1, 2010 are Civil cases 08-1420 (GAG), 08-1724(GAG) and 08-2326(GAG). In this
15 extremely congested district, both on the civil and criminal dockets, it is thus extremely important
16 for the court to effectively manage its caseload. This allows the parties and to have their day in
17 court at a firm date. Because it is frequent that judges of this court may have scheduled more than
18 one trial for a same date, magistrate judges are an effective alternative for litigants. Here, because
19 Civil Case 08-1703(GAG) is older than the present case, should both cases ultimately proceed to
20 trial (likely the case, absent a last minute settlement), the present case will have to be continued sine
21 die. Allowing plaintiff to withdraw her consent will, thus, do no justice to defendants and herself.
22 More important, given the above, plaintiff in her motion has not demonstrated extraordinary
23 circumstances to withdraw her valid consent.

24 Finally, the court notes that the fact that the case will not be tried on October 12, does not
25 mean that Judge Mc Giverin will not set an expedited trial date. From defendants' motion (docket
26 134), it appears that on or after November, defendants' attorneys are available (although they prefer
27 the case to be tried early next year). The parties are thus at liberty to agree to a mutually convenient
28 trial date.

Civil No. 08-2387 (GAG/BJM)

3

SO ORDERED.

In San Juan, Puerto Rico this 15th day of September, 2010.

s/ Gustavo A. Gelpi

GUSTAVO A. GELPI

United States District Judge